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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HUGH M. MATCHETT,

Petitioner,

vs.

CHICAGO BAR ASSOCIATION, an Illinois corporation, FIELD ENTERPRISES, INC., a Delaware corporation, and CHICAGO TRIBUNE COMPANY, an Illinois corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

I

Whether Under The Decision Rendered By This Court In New York Times Co. v Sullivan, 1964. 376 US 254, A State Court Can Dismiss A Libel Action By A Judicial Candidate Against A Bar Association For A Published Statement About The Candidate That Implies The Existence Of Undisclosed Facts That Are Both False And Defamatory, Solely Because He Failed To Allege That The Defendants Published The False With "Actual Malice" Or "With Knowledge That It Was False Or With Reckless Disregard Of Whether It Was False Or True, When He Is Willing To Amend His Complaint To Make Those Allegations.

II

Whether Under The Decision Of This Court In Herbert v Lando, 1979, 441 US 153, A State Court Can Dismiss A Libel Action By A Judicial Candidate Against A Bar Association For A Published Statement About The Candidate That Implies The Existence Of Undisclosed Facts That Are Both False And Defamatory, Solely For The Reason Stated In Question I, Without Giving Him Leave To File An Amended Complaint And To Have Discovery, If Necessary, To Assist Him In Preparing It.

III

Whether Under The Decision Of This Court In New York Times Co. v Sullivan, 1964, 376 US 254, And Under The Decision Of This Court In Herbert v Lando, 441 US 153, The Innocent Construction Rule Is Not Unconstitutional In Violation Of The Plaintiff's Right To Discovery Of The Motives Of The Defendants In Making An Attack Against Him.

IV

Whether Petitioner Was Entitled To A Declaratory Judgment Against The Chicago Bar Association That He Had Met All Its Criteria Other Than Its Undisclosed Criteria In Regard To Age When Under The Rules Governing The Committee It Was Required To Vote On All Criteria And To Advise Him In Regard To Any Criteria He Failed To Meet, And That He Had Only Failed To Meet Its Undisclosed Criteria in Regard To Age, And To A Declaratory Judgment As To What That Age Criteria Was.

V

The Language That Petitioner Claims Has Defamed Him Is Not Capable Of An Innocent Construction. Once The Court Admitted That Some People Would Interpret It The Same Way Petitioner Does It Ceased To Be Innocent As A Matter Of Law.

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In The

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October Term, A.D. 1984

HUGH M. MATCHETT,

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CHICAGO BAR ASSOCIATION, an Illinois corporation, FIELD ENTERPRISES, INC., a Delaware corporation, and CHICAGO TRIBUNE COMPANY, an Illinois corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

HUGH M. MATCHETT, Petitioner, Pro Se, petitions the Court to issue a writ of certiorari to the Supreme Court of Illinois to

review an order of that court entered on November 30th, 1984, denying a petition for appeal as a matter of right under Article VI, Section 4(c), as regulated by Supreme Court of Illinois Rule 317, or, in the alternative, as a matter of sound judicial discretion under Supreme Court of Illinois Rule 315, from a Judgment of May 17th, 1984, of the Illinois Appellate Court, First Judicial District, Fourth Division, affirming a Judgment of March 15th, 1982, of the Circuit Court of Cook County, Illinois, dismissing his suit in chancery against the Chicago Bar Association and two Chicago newspapers for libel and for a declaratory judgment and for equitable relief, for a purported failure of the complaint to state a cause of action.

This petition is due to be filed on or

before February 28th, 1985.

OPINION BELOW

The Supreme Court of Illinois rendered no opinion. The opinion of the Illinois Appellate Court, First Judicial District, Fourth Division, is reported as: Matchett v Chicago Bar Ass'n, 1984, 125 Ill. App. 3d 1004. It is set out in the Appendix at Pages 1a-27a.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, U.S. Code, § 1257(3).

ILLINOIS CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS AND RULES INVOLVED IN THIS CASE

The Constitution of Illinois provides:

Article VI, Section 1: "The judicial power is vested in a Supreme Court, an Ap-

pellate Court and Circuit Courts."

Article VI, Section 4(a): "Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court."

Article VI, Section 6: "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court located."

Supreme Court of Illinois Rule 301 provides: "Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding. All rights that could have been asserted by appeal or writ of error may be

asserted by appeal. No formal exception need be taken in order to make any ruling or action of the court reviewable."

Supreme Court of Illinois Rule 315 provides: "(a) Petition for Leave to Appeal: Grounds. A petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion."

Supreme Court of Illinois Rule 316 provides: "Appeals from the Appellate Court shall lie to the Supreme Court upon the certification by the Appellate Court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court. Application for a certificate of importance may be included in a pe-

tition for rehearing * * * ."

Supreme Court of Illinois Rule 317 provides: "Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court. The appeal shall be initiated by filing a petition in the form prescribed by Rule 315, except the petition shall be entitled 'Petition for Appeal as a Matter of Right.' * * * When both appeal as a matter of right and leave to appeal are sought, both requests will be disposed of by a single order. If the court allows the petition, briefs and abstracts in cases in which they are required, shall be filed as provided in the case of appeal by leave under Rule 315."

STATEMENT OF THE CASE

Petitioner was a candidate for the Republican nomination for judge of the Illinois Appellate Court, First Judicial District, at the Primary Election held on March 16th, 1982, in which he was opposed and defeated by another candidate favored by the defendants, Petitioner receiving 49.3% of the votes. He had filed the suit in an effort to force them to admit that while he had been found "Not Recommended" by the Chicago Bar Association because he failed to meet its private criteria in regard to age, that finding did not find him "Not Qualified"" as the newspapers insisted. The Chicago Bar Association had refused to declare itself on that issue. Petitioner had filed the suit so he would have the benefit of a judgment on the issue at the election.

The trial court dismissed his suit in chancery on March 15th, 1982, on the eve of the primary on March 16th, 1982, and refused to permit him to file an amended complaint for discovery and other relief. He appealed to the Appellate Court. The Appellate Court decided the issues against him on May 17th, 1984, and he filed a petition for rehearing. It was denied on August 9th, 1984.

He then filed a petition for appeal as a matter of right, which should have been allowed on that basis, because the matter of the innocent construction rule arose for the first time in the Appellate Court. The CBA raised the issue in its answering brief in the Appellate Court, and Isham, Lincoln & Beale, according to the Law Bulletin, argued the matter on the oral argument in that court, Since the issue was raised by

the defendants for the first time in the Appellate Court, and that court necessarily exercised its original jurisdiction in doing so, and whenever it does that, the Supreme Court of the State should review the action of the Appellate Court as a matter of due process of law and the protection and equal protection of the law.

This Court should grant this petition to provide the appellate review because it is the only court left to perform that function.

Petitioner insists that the innocent construction rule violates the 14th Amendment, Section 1, because it deprives him of his right to discover what his respondent's motive or motives were under the rule laid down by this court in Herbert v. Lando, 1979, 441 U.S 153 that the "actual malice" rule requires discovery to be permitted to balance the scales of justice.

In John v. Tribune Co., (1962), 24 Ill.2d 437, cert. denied (1962), 371 U.S. 877, 9 L. Ed. 2d 114, 83 S. Ct. 148, the Supreme Court of Illinois said the innocent construction rule held that a newspaper article "is to be read as a whole and the words given their natural and obvious meaning, and requires that words allegedly libelous that are capable of being read innocently must be so read and declared nonactionable as a matter of law." (24 Ill. 2d 437, 442.) In Chapski v. Copley Press, 1982, 92 Ill.2d 344, held "that a written or oral statement is to be considered in context, with the words and the implications therefrom given their natural and obvious meaning; if, as so construed, the statement may reasonably be innocently inter-

preted * * * it cannot be actionable per se. This preliminary determination is properly a question of law to be resolved by the court in the first instance; whether the publication was in fact understood to be defamatory * * * is a question for the jury should the initial determination be resolved in favor of the plaintiff. * * * We point out, however, that the innocent-construction rule requires language to be so treated only where that characterization, too, is a reasonable one."

In the present case, Matchett v. Chicago Bar Ass'n, 1984, 125 Ill. App. 3d 1004, 1010, the court said: "Although the defendants in the instant case maintain that the published statements were opinions and

therefore not actionable, it appears clear to us that the statements were opinions based on undisclosed facts."

But then the Court went off on a tangent and decided that: "Our initial task therefore, is to ascertain whether the language allegedly defaming Matchett in his chosen profession is susceptible to an innocent construction." Then it holds that it is. But it had no right to do so because it admits: "While some readers might interpret the word 'unqualified' to mean 'unfit for office,' the innocent and true meaning of the CBA's rating, appearing as it did within three sentences of the challenged word, renders the newspapers' language nonactionable as a matter of law." On the contrary, once it is admitted reasonable minds might come to a different conclusion it is no longer innocent as a matter of law.

CONCLUSION

It is obvious to Petitioner that under the silly innocent construction rule that sounds like common sense in the opening statement when it talks about a reasonable construction and then repudiates all reason in its application, and the requirement that a pleader must allege "actual Malice" in a constitutional "malice" sense, and not in a common law "malice" sense, the Illinois Appellate Court, to use a phrase from Rudyard Kipling: have rigged "a Joseph's jury coat" to keep defendants' honor warm.

Petitioner suggests this Court grant this petition and destroy the innocent construction rule in Illinois, and clarify the actual malice rule.

Respectfully submitted,

HUGH M. MATCHETT

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APPENDIX

"A"

Opinion of the Fourth Division of the Illinois Appellate Court, First District, On May 17th, 1984, In Case No. 82-1021, Reported As 125 Ill. App. 3d 1004, On Appeal From The Circuit Court of Cook County, Illinois, The Honorable Joseph M. Wosik, Presiding, Petition For Rehearing Denied On August 9th, 1984.

"Hugh M. Matchett, Plaintiff-Appellant, vs. Chicago Bar Association, an Illinois corporation, Field Enterprises, Inc., a Delaware corporation, and Chicago Tribune Company, an Illinois corporation, Defendants-Appellees."

PRESIDING JUSTICE LINN delivered the opinion of the court:

Plaintiff, Hugh M. Matchett, a Chicago attorney, brought this libel action in the circuit court of Cook County seeking a declaratory judgment, injunctive relief, and damages against defendants, the Chicago Bar

Association (CBA), the Chicago Tribune Company, and Field Enterprises, Inc., publisher of the Chicago Sun-Times. The motions to dismiss filed by all three defendants were granted, and plaintiff's subsequent motions to vacate the dismissal and to amend his complaint were denied.

On appeal, plaintiff charges that the circuit court erred (1) in refusing his requests for both injunctive relief and a declaratory judgment, (2) in dismissing his complaint for failure to state a cause of action for libel, and (3) in denying his motion for leave to amend his complaint.

We affirm the decision of the trial court.

FACTS

Hugh M. Matchett was a candidate for nomination by the Republican party for the office of justice of the appellate court in the March 16, 1982 primary election. The CBA, "recognizing the responsibility of the legal profession to ensure that qualified judges are elected" (Anagnost v. Chicago Bar Association (1980), 83 Ill. App. 3d 466, 468, 404 N.E.2d 326, 327) and claiming a legitimate interest in the qualifications of candidates for judicial office, invited each candidate for judicial office voluntarily to submit to its evaluation procedures, the results of which would form the basis of a published listing indicating whether a particular candidate had been rated as "Highly

Recommended", "Recommended", or "Not Recommended." Although the candidates were informed of the criteria used by the CBA, the public was not, and the candidates were not informed of the results of the evaluation on each of the criterian.

In December, 1981, Matchett submitted the required information to the CBA's Committee on Evaluation of Candidates, and an investigator reviewed his completed questionnaire, interviewed listed references and other attorneys, and considered other available products of his work. The committee complied a detailed written report that was submitted to a hearing panel prior to the panel's interview of Matchett. At the conclusion of the interview, the panel vo-

ted on its evaluation, and on January 13, 1982, the results were sent to Matchett in a letter from the president of the CBA that stated, inter alia, "I regret to advise you that the Committee has concluded that you do not meet its established criteria for this important office, by reason of age, and therefore found you 'Not Recommended.'"

As Matchett was aware, the CBA has a policy of not recommending candidates for the office of judge of the appellate court if they are over 65 years of age and are seeking judicial office for the first time, unless they exhibit exceptional qualifications, the reason being they will not be able to complete one full 10-year term before the mandatory retirement age of 75.

On February 22, 1982, the CBA issued a press release, explaining the process of evaluation and giving the final rating for each candidate. Matchett was rated "Not Recommended." The Chicago Tribune reported the CBA's action on the following day, February 23; the Chicago Sun-Times carried the story on February 24.

The Tribune article reported both the CBA's unelaborated rating and Matchett's comment:

> "The bar association found only one judicial candidate unqualified: Hugh M. Matchett, a Chicago attorney running for the Republican nomination to the Illinois Appellate Court.
>
> The association, in its press

release, gave no reason for the rating. Matchett said it told him he received a 'not recommended' rating because of his age, which is 69."

The Sun-Times article stated,

"The only judicial candidate found unqualified by the bar group was Hugh M. Matchett, a Chicago lawyer who is seeking the Republican nomination for the Illinois Appellate Court.

Matchett, 69, said the association told him he was unqualified because of his age. The bar group did not comment on the rating."

On February 23, Matchett sent a letter to Kevin M. Forde, president of the CBA, re-

requesting a retraction of the age rule on the grounds that not only is age an irrelevant criterion, but also age discrimination in employment has been expressly forbidden by the Illinois General Assembly. Further, on the basis of Forde's letter to him, Matchett assumed that he had been found "Recommended" or "Well Recommended." No action was taken by the CBA.

On March 12, 1982, four days before the primary election, Matchett filed this suit, claiming that he had been defamed in his professional capacity as an attorney and candidate for judicial office by all three defendants. The CBA was named because its "Not Recommended" rating implied that Matchett was not recommended on the

basis of the overall investigation and evaluation, and the two newspapers because they used the word "unqualified" to describe the CBA's finding; indeed, the Sun-Times stated that the CBA had rated Matchett as unqualified, while the Tribune reported the correctly worded rating but used the term "unqualified" to summarize the CBA's evaluation of Matchett. Although the suit did not request a specific sum of money in damages, Matchett asked the defendants to submit proposals for a reasonable amount.

In addition, Matchett asked for a declaratory judgment against the CBA stating that, aside from the age criticism, he had been found qualified or well-qualified.

Finally, Matchett moved for a mandatory injunction to compel the newspapers to publish both the letter he had sent to Forde and an apology or retraction concerning the CBA's "Not Recommended" rating, as well as a negative injunction to restrain defendants from "any further conduct of the kind complained of," which we presume to mean unelaborated ratings, ratings based on age, and interpretation of ratings using allegedly defamatory terms.

All three defendants filed motions to dismiss the complaint for failure to state a claim upon which relief may be granted, their main argument being that both injunctions requested could not be granted because of First Amendment freedoms. In ad-

dition, they variously maintained that both the original press release and the newspaper reports concerning the CBA's finding were entitled to a qualified privilege, and that Matchett's pleadings did not contain allegations and supporting facts sufficient to establish the "actual malice" necessary to overcome the privilege.

The trial court, without comment, granted the motions of all three defendants and dismissed the complaint with prejudice. Upon the denial of his motion to vacate the judgment and to amend his complaint to contain a bill of discovery and to challenge the validity of the constitutional and statutory sections providing for the mandatory retirement of judges, Matchett filed this

appeal.

OPINION

Turning first to a consideration of the propriety of the trial court's refusing Matchett's request for injunctive relief, we note that although in the three motions to dismiss, only the Tribune Company responded directly to Matchett's allegations that he had a clear right in need of protection, that he would suffer irreparable injury if the injunctions were not granted, and that he had no adequate remedy at law, all three defendants correctly selected the fourth requirement for an injunction, i.e., that the movant has a likelihood of success on the merits (Baal v. McDonald's Corporation (1981), 97 Ill. App. 3d 495, 422 N.E.2d 1166),

as the target for their strongest arguments.

In Miami Hearld Publishing Co. v. Tornillo (1974), 418 U.S. 241, the Supreme Court held that a government's intrusion into a newspaper's editorial decisions concerning what and what not to publish imposed an unconstitutional prior restraine on the press in violation of the First Amendment:

> "The choice of material to go into a newspaper * * * and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this process can be exercised consistent with First Amendment guarantees

of a free press * * * ."
(418 U.S. at 258.) Further, it is settled law that unless a plaintiff can establish of one of a very limited number of exceptions, equity will not enjoin the publication of a libel, so strong are the constitutional guarantees of freedom of speech and of the press. Montgomery Ward & Co. v. v. United Retail, Wholesale & Department Store Employees of America (1948) 400 Ill. 38, 79 N.E.2d 46.

A reviewing court will reverse the trial court only if it finds that the issuance or denial of a request for injunctive relief was against the manifest weight of the evidence. (LaSalle National Bank v. Triumvere Homeowners Association (1982), 109 Ill. App. 3d 654, 400 N.E.2d 1073.)

Clearly, such was not the case here. We therefore find no error in the trial court's refusal to grant Matchett injunctive relief. In addition, the above reasoning and disposition apply equally to his request for a declaratory judgment against the CBA; by asking that the bar association acknowledge that he fulfilled all criteria for a "Recommended" or "Highly Recommended" rating other than age, Matchett is attempting to force the CBA to make public statements that the bar association does not choose to make. The CBA never promised to inform the public of its criteria, nor did it promise Matchett to inform him of the results of the committee's vote on each item in the total evaluation. All it promised to do was inform Matchett of

the reason for the committee's rating, which it did; Matchett may not compel the association to publish information it has chosen not to publish.

II

The second claim of error Matchett raises on appeal is that the trial court erred in dismissing his complaint for failure to state a cause of action for libel per se. Because the analysis of the complaint against the newspapers is different from that of the complaint against the CBA, we will deal with each in turn.

For plaintiff to recover in an action based on libel per se, the statement serving as the basis of the action must falsely

charge the plaintiff with an incapacity or misconduct in words so obviously damaging that proof of actual injury need not be made. (Costello v. Capital Cities Media, Inc. (1982), 111 Ill. App. 3d 1009, 445 N.E.2d 13.) Of the four catagories of words constituting libel per se, two serve as the basis of the complaint in the instant case: an imputation of unfitness in performing the duties of an office or employment, and an imputation that a person lacks ability in his business, trade, or profession. Fried v. Jacobson (1983), 99 Ill. 2d 24, 457 N.E.2d 392.

Even if the language at issue charges a plaintiff with unfitness or lack of ability, however, it will not be actionable if

the statement is clearly one of opinion, not of fact. As emphasized in Gertz v. Robert Welch, Inc. (1974), 418 U.S. 323, liability will not accrue for the utterance of a defamatory opinion: however, the First Amendment does not preclude liability for a published statement that implies the existence of undisclosed facts that are both false and defamatory. (Howell v. Blecharczyck (1984), 119 Ill. App. 3d 987, 457 N.E.2d 492.) Although the defendants in the instant case maintain that the published statements were opinions and therefore not actionable, it appears clear to us that the statements were opinions based on undisclosed facts.

However, even an allegation of libel

per se for a statement of opinion based on undisclosed facts may not be actionable. When "considered in context, with the words and the implications therefrom given their natural meaning; if * * * the statements may reasonably be innocently interpreted * * * it cannot be actionable per se. This preliminary determination is properly a question of law to be resolved by the court * * * ." (Chapski v. Copley Press (1982), 92 Ill. 2d 344, 352, 442 N.E.2d 195, 199.) Our initial task therefore, is to ascertain whether the language allegedly defaming Matchett in his chosen profession is susceptible to an innocent construction.

When we turn to an examination of the newspaper stories claimed to be defamatory,

it is clear that the crucial word is "unqualified." In its summary of the press release, the Chicago Tribune substituted the word "unqualified" for the CBA's term "Not Recommended", although it reported the correct term when speaking of the actual rating. In addition, and crucial to this case, it correctly reported Matchett's explanation of the rating, which was given on account of his age. The Sun-Times article incorrectly reported that the CBA had found Matchett unqualified instead of using the correct rating. However, it accurately reported Matchett's explanation for the rating. Matchett charges that the word "unqualified", coupled with the CBA's unexplained "Not Recommended" rating, connotes undisclosed defamatory facts and therefore is actionable as

libel per se.

Applying Chapski innocent construction rule, the natural and obvious meaning of the words in context is that Matchett was not recommended by the CBA for the office of appellate court judge simply because of his age. "/A/n innocent construction requires a fair reading of the entire article which gives the words their meaning. Isolated words * * * may not be taken out of context." (Crinkley v. Dow Jones & Company, Inc. (1983), 119 Ill. App. 3d 147, 152, 456 N.E.2d 138, 142.) While some readers might interpret the word "unqualified" to mean "unfit for office," the innocent and true meaning of the CBA's rating, appearing as it did within three sentences of the chal-

lenged word, renders the newspapers' language nonactionable as libel per se. Accordingly, we find no error in the trial court's granting the motions to dismiss filed by the two newspapers.

Matchett's second charge of libel, that against the CBA, is based on the February 22, 1982 press release, in which the bar association gave Matchett an unelaborated rating of "Not Recommended." Because a reader could not ascertain which of the possibly pertinent criteria he had failed to meet, Matchett charges that the unelaborated rating was defamatory in that it implied that the rating was the result of the overall investigation and evaluation. Further, Matchett charges that the CBA knew, or in the

exercise of reasonable care should have known, that the press and public would interpret the words "Not Recommended" to mean "Not Qualified," with the result that his fitness for office and his professional competency would be called into question. We do not agree.

The doctrine of freedom of speech and of the press represents "a profound national commitment to the principle that debates on public issues should be uninhibited, robust, and wide-open * * * ." (New York Times Co. v. Sullivan (1964), 376 U.S. 254, 270.) Because it is crucially important that people should discuss the character and qualifications of candidates for public office, a

publication concerning a public official or public figure, which includes candidates for office, is protected from suit for defamation unless the public official or public figure can demonstrate that the falsehood was published with "actual malice," i.e., with knowledge that it was false or with reckless disregard of whether it was false or not. 376 U.S. at 280.

This qualified privilege of publication is abused only if the speaker "does not believe in the truth of the defamatory matter, or has no reasonable grounds for believing it to be true." (Allen v. Ali (1982), 105 Ill. App. 3d 887, 892, 435 N.E.2d 167, 170-71.) We therefore find that the trial court properly dismissed Matchett's complaint against the CBA.

III

Last, Matchett contends that the trial court's denial of his motion to amend his complaint was an abuse of discretion. We disagree. Although Matchett maintains that some of the proposed amendments would have raised constitutional issues, our examination of his statement of those issues reveals that the CBA, which has no actual control over the use of age in a discrininatory manner in order to force retirement, is an inappropriate defendant for such a suit. Other amendments would have converted the complaint into one for a declaratory judgment and a request for a bill of discovery. Since none of the suggested amendments would have cured the defects in the plead-

ings, the trial court's denial of the motion was not an abuse of discretion. Reardon v. Ford Motor Co. (1972), 7 Ill. App. 3d 338, 287 N.E.2d 519.

Accordingly, for all the reasons set forth above, we find the complaint to be insufficient to state a claim upon which relief may be granted, and we affirm the trial court's dismissal of all counts.

Affirmed.

Johnson and Romiti, JJ., concur.

"B"

Order Entered By The Illinois Appellate Court on June 7th, 1984

This matter coming on to be heard on the motion of HUGH M. MATCHETT, Plaintiff-

Appellant, Pro Se, for an extension of time from June 6th, 1984, to and including July 12th, 1984, in which to file a petition for rehearing of the opinion rendered by this Court on May 17th, 1984, affirming the judgment below, and leave to file a 40 page not printed brief, for the reasons stated in said motion, and the Court, being fully informed in the premises, finds that said moshould be, and it hereby is, allowed, and Appellant's time for filing a 40 page not printed brief is extended to and including July 12th, 1984.

ENTER:

s/ DAVID LINN
JUDGE

"C"

Petition For Rehearing filed July 12th, 1984 in the Illinois Appellate Court, First District, in Case No. 82-1021, the body of which reads:

Now comes HUGH M. MATCHETT, Plaintiff-Appellant, Pro Se, and petitions the Court to grant a rehearing to consider points overlooked or misapprehended by this Court in its opinion.

I

OPINION

This Court holds that the defendants correctly selected the fourth requirement for an injunction, i.e., that the movant has a likelihood of success on the merits, as the basis for their motions to dismiss this suit. We disagree. All the requirements necessary to obtain an injunction are present in this

case. * * * It relies on the well established rule that a court should not issue a prior restraint. But that rule has no application here because we are dealing with a subsequent restraint to prevent republication of a libel. * * *

This Court then states: "In addition, the above reasoning and disposition apply equally to her request for a declaratory judgment against the CBA: * * * Matchett may not compel the assocoation to publish information it has not chosen not to publish."

* * * Plaintiff requested that this Court require the CHICAGO BAR ASSOCIATION to file its rules governing its evaluation committee. You denied his motion. But if

the motion had been allowed, as it should have been, you would have discovered the following facts. "A Resolution Concerning Procedures For Evaluation Of Candidates For Judicial And Certain Other Offices, Adopted By The Board of Managers" Of The Chicago Bar Association "On June 14, 1976 As Amended Through June 8, 1978" contains the following provisions that taken in context prove the truth that Plaintiff has demanded that the CBA admit.

Paragraph 15 reads: "CRITERIA. There shall be written criteria for evaluation. They shall encompass integrity, legal knowledge, legal ability, judicial temperament, diligence, punctuality, health, age, professional experience, and such other ele-

ments of character and ability which the Committee shall define subject to approval of the Board."

Paragraph 26 reads: "26.1. As to all candidates, the question shall be whether the candidate shall be HIGHLY RECOMMENDED, or RECOMMENDED." "26.2. The affirmative vote of 80 percent of the panel members voting shall be required for HIGHLY RECOMMENDED for RECOMMENDED." "26.4. In addition to the vote on the question as to each candidate each member shall evaluate the candidate as to the Criteria provided for in this Resolution." "26.5. The vote on the question, and the evaluation with respect to Criteria, shall be by secret ballot in a form substantially in accordance with a ballot appended

as Appendix A.""26.6. A failure to receive the affirmative vote of 60 percent of the members voting shall result in a finding of NOT RECOMMENDED."

Paragraph 28.1 reads: "Finding. The finding of the Hearing Division panel shall be promptly communicated by the President to the candidate, the Board, the Committee, and to the court, committee, party, or other entity which submitted the candidate for evaluation, or which may be considering the candidate for election, nomination, slating, or appointment. In the case of a finding of NOT RECOMMENDED, the communication shall be accompanied by a statement of the reasons of the reasons for the finding."

On January 13th, 1982, Kevin M. Forde,

President of the CBA, wrote Plaintiff a letter advising him: "* * * the Committee has concluded that you do not meet its established criteria for this important office, by reason of age, and therefore, found yo 'Not Recommended.' * * * *"

It follows that Plaintiff received the required 60 percent vote on all the Criteria except age, and that he would have received the required 60 percent vote on the Recommendation had he met the CBA's age Criterian, if CBA performed its contract with him, and that if it did not, it is estopped to deny Plaintiff receeved the required 60 percent vote on all the Criteria except age, and is estopped to deny that he would have received the required 60 percent vote on the Recom-

mendation had he met the CBA's age Criterian.

The Circuit Court of Cook County and this Court have the power to enter a declaratory judgment to that effect whether the Chicago Bar Association likes it or not.

It is also obvious that the statement made by the attorney for the CBA on oral argument that the Committee in making its evaluation of a candidate could but it was not required to vote on all criteria in addition to voting on the question whether the candidate should be "Well Recommended" or "Recommended" or "Not Recommended" was incorrect.

II

* * *

* * *

This Court has overlooked the fact that the Supreme Court of Illinois in Chapski v. Conley Press, 1982, 92 Ill. 2d 344, 351-2, said: "We point out, however, that the innocent-construction rule requires language to be so treated only when that characterization, too, is a reasonable one.", and it certainly is not under the circumstances of this case. Neither newspaper is "innocent". They knew better. The Sun-Times was not "innocent when it said that Plaintiff himself had told their reporter that the Chicago Bar Association had told him he was unqualified because of his age. The complaint states: "Matchett did not tell the Chicago Sun-Times that the association had told him he was un-

qualified because of his age. He told the reporter that he had been correctly quoted in the Chicago Tribune the previous day." Both newspapers took their chances in using their own terminology rather than confining themselves to what CBA had said.

Furthermore, the innocent-construction rule is unconstitutional, under Article 1, Section 2, of the Constitution of the State of Illinois, and under the 14th Amendment, Section 1, to the Constitution of the United States, as depriving him of his right to discovery of what the newspapers' motives were in doing what they did. In Herbert v. Lando, 1979, 441 US 153, the Court recognized that the trial court must "focus on the conduct and state of mind of the defendant" in order

to prove liability, and such proof requires a showing that the defendant "must know or have reason to suspect that his publication is false.""inevitably, unless liability is to be completely foreclosed, the thought and editorial processes of the alleged defamer would be open to examination." It also deprives him of his right to a jury trial on the issue of the defendants' innocence.

* * *

Once this Court conceded that "some readers interpret the word "unqualified" to mean "unfit for office" it had no right to inflict the innocent-construction rule on this case.

* * *

The Chicago Bar Association, and the newspapers, all knew the truth but proceeded to

attack the Plaintiff with "actual malice,", i.e., with knowledge that their statements were false, or, at least, with reckless disregard whether they were false or not. All of them were motivated by desire to beat Plaintiff at the polls. The complaint is capable of being amended to so state, and he will make the amendment if permitted to do so. None of them had any reasonable grounds for believing the falsehood to be true. The Court's statement that plaintiff has made a bare conclusionary allegation of malice without supporting facts, is simply not true. It follows that the Court is in error in holding that the trial court properly dismissed Matchett's complaint against the CBA.

III

The Court Is In Error In Holding That The Trial Court's Denial Of His Motion To Amend His Complaint Was Correct.

* * *

Resprctfully submitted,

HUGH M. MATCHETT

"D"

Order Entered By The Appellate Court On August 9th, 1984:

This cause coming on to be heard on the Petition For Rehearing of Appellant, and the court being fully advised in the premises:

IT IS ORDERED that the Petition for Rehearing be and the same is hereby denied.

DATED at Chicago, Illinois, this 9th day of August, 1984.

ENTER: s/ DAVID LINN

s/ PHILIP ROMITI

s/ GLENN T. JOHNSON

"E"

Motion Filed By Hugh M. Matchett In The Appellate Court On August 20th, 1984:

Now comes HUGH M. MATCHETT, Plaintiff-Appellant, Pro Se, and advises the Court that in denying his petition for a rehearing in its Order of August 9th, 1984, this Court failed to pass on the State and Federal constitutional questions presented therein that arose for the first time in this Court in and as a result of the action of this Court in basing its decision in favor of the defendant newspapers on the innocent construction rule, which is attacked in said petition as being a denial of due process and equal protection of the

and a jury trial on an issue of fact, etc. It is hornbook law that a denial of a petition for rehearing does not pass on any issue raised therein. Yet the Court had jurisdiction to pass on the constitutional issues stated and failed to do so. As Chief Justice Marshall said in Cohen v. Virginia, 1821, 6 Wheat. (U.S.) 264, 403, "With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, then to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur, which we would gladly avoid: but we cannot avoid them. All

we can do is, to exercise our best judgment and conscientiously to perform our duty." Accordingly, he prays that this Court will vacate or modify its Order of August 9th, 1984, and pass on the constitutional issues. Otherwise, you will have denied him the protection and equal protection of the laws and due process of law and a remedy in violation of Article I, Section 2, and Section 12, of the Constitution of the State of Illinois, and the 14th Amendment, Section 1, to the Constitution of the United States.

"F"

Motion filed by Hugh M. Matchett In The Appellate Court On August 20th, 1984:

Now comes HUGH M. MATCHETT, Plaintiff-Appellant, Pro Se, and moves the Court for a certificate under Rule 316 that this case

involves a question or questions of such importance that it should be decided by the Supreme Court, especially whether the Chicago Bar Association owed plaintiff any duty to speak up and clarify its position in regard to his candidacy, and whether the innocent construction rule is applicable and constitutional, and whether the Chicago Bar Association's procedures for evaluating and recommending judicial candidates is void on the ground of public policy, but not limited thereto. He intends in good faith to appeal as a matter of right or grace, and prays that the mandate be stayed pending further order of this Court. s/ HUGH M. MATCHETT

"G"

Order Entered By Appellate Court On September 10th, 1984:

This matter coming on to be heard on the motion of Hugh M. Matchett, plaintiff-appellant, for the issuance of a Certificate of Importance under Supreme Court Rule 316 and for other relief: and this Court being fully informed;

It is ordered that the motion be and the same is hereby denied.

Dated at Chicago, Illinois, this 10th day of September, 1984.

Enter:

s/ DAVID LINN

s/ PHILIP ROMITI

s/ GLENN T. JOHNSON

"H"

Order Entered By Appellate Court On September 10th, 1984:

This matter coming on to be heard on the motion of Hugh M. Matchett, plaintiff-appellant, to vacate or modify this court's order of August 9, 1984 and for other relief; and this court being fully informed;

IT IS ORDERED that the motion be and the same is hereby denied.

DATED at Chicago, Illinois, this 10th day of September, 1984.

ENTER:

s/DAVID LINN

s/ PHILIP ROMITI

s/ GLENN T. JOHNSON

APPENDIX "I"

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62706
(217) 782-2035

November 30, 1984

Mr. Hugh M. Matchett
Attorney at Law
5834 South Stony Island
Chicago, Illinois 60637

No. 60800 – Hugh M. Matchett, Petitioner, vs. Chicago Bar Association, an Illinois corporation, Field Enterprises, Inc., a Delaware corporation, and Chicago Tribune Company, an Illinois corporation, Respondents. Leave to Appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or in the alternative, petition for leave to appeal in the above entitled cause.

Very truly yours,

JULEANN HORNYAK
Clerk of the Supreme Court